

file

BEFORE THE
STATE OF WISCONSIN

DIVISION OF HEARINGS AND APPEALS

Application of Douglas and David May for an)
After-the-Fact Permit for a Dock on the) 3-WC-94-1061P
Bed of the St. Croix River, Town of Clifton,)
Pierce County, Wisconsin)

Investigation on Motion of the Department of)
Natural Resources of an Alleged Unlawful)
Construction and Maintenance of a Structure on) 3-WC-94-1061
the Bed of the St. Croix River, Town of Clifton,)
Pierce County, Wisconsin)

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND PERMIT

On May 13, 1994, Douglas and David May applied to the Department of Natural Resources for an after-the-fact permit to maintain a pier in the St. Croix River. The staff of the Department of Natural Resources conducted field investigations and allege that Douglas and David May, have constructed and maintained a structure in the St. Croix River adjacent to property they own in violation of secs. 30.12 and 30.15., Stats. It is further alleged that said actions by Douglas and David May violate secs. 30.12, 30.15 and 30.294, Stats.

Pursuant to due notice, a combined hearing was held in River Falls, Wisconsin on May 15, 1996, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Douglas and David May, Applicants, by

Joseph D. Boles, Attorney
Rodli, Beskar, Boles & Krueger, S.C.
219 North Main Street
P. O. Box 138
River Falls, Wisconsin 54022-0138

Wisconsin Department of Natural Resources, by

Milton L. Donald, Attorney
P. O. Box 7921
Madison, Wisconsin 53707-7921

At the outset of the hearing, the Department of Natural Resources withdrew its motion alleging the unlawful construction and maintenance of a structure on the bed of St. Croix River and seeking an order for removal of the structure.

FINDINGS OF FACT

1. Douglas and David May own real property located in the SE 1/4 of the NE 1/4 of Section 11, Township 27 North, Range 20 West, Pierce County, Wisconsin. The property is located along the east side of the St. Croix River. The St. Croix River is navigable in fact at the May's property.

2. Douglas and David May (applicants) have filed an application with the Department of Natural Resources (Department) dated May 13, 1994, for an after-the-fact permit authorizing the maintenance of a pier currently in existence on the bed of the St. Croix River. The Department and the applicants have complied with all procedural requirements of sec. 30.02, Stats.

3. The subject pier is a floating dock, 45 feet long and 12 feet wide. The pier is anchored by gin poles. The pier is connected to shore by a ramp which is twenty feet long and thirty inches wide. The ramp and pier combined extend approximately sixty feet into the river. The pier is used to dock boats belonging to the applicants.

4. The subject pier does not materially obstruct navigation or reduce the effective flood flow capacity of the St. Croix River. The record contains no evidence that the pier is detrimental to the public interest; however, the applicants have not presented any evidence that a twelve foot wide pier is necessary for the purposes the applicants use their pier.

5. Although the width of the applicants' pier exceeds the Department's reasonable use guidelines, it is within the range of typical pier widths on this stretch of the St. Croix River.

6. A pier survey is planned for this stretch of the St. Croix River. After completion of the survey, more specific pier size guidelines will be issued. The Department withdrew its enforcement action and stipulated to the issuance of a permit for the existing structure for a period of ten years. After ten years, the applicants agree to reduce their pier to the size of whatever rules or regulations relating to pier sizes are in existence or apply for a permit if one is required. Since the applicants pier is within the range of typical piers presently in existence in this area, it is reasonable to allow it exist for a ten year period. Allowing the current pier to exist for ten years will not be detrimental to the public interest.

7. The permitted structure will not adversely affect water quality nor will it increase water pollution in the St. Croix River. The structure will not cause environmental pollution as defined in sec. 144.01(3), Stats., if the structure is maintained in accordance with this permit.

8. The Department has complied with the procedural requirements of sec. 1.11, Stats., and Ch. NR 150, Wis. Adm. Code, regarding assessment of environmental impact.

CONCLUSIONS OF LAW

1. The applicants are riparian owners within the meaning of sec. 30.12, Stats.
2. The proposed pier described in the Findings of Fact constitutes a structure within the meaning of sec. 30.12, Stats.
3. The Division of Hearings and Appeals has authority under secs. 30.12 and 227.43(1)(b), Stats., and in accordance with the foregoing Findings of Fact, to issue a permit for the maintenance of the structure subject to the conditions specified.
4. The project is a type III action under sec. NR 150.03(8)(f)4, Wis. Adm. Code. Type III actions do not require the preparation of a formal environmental impact assessment.
5. The subject pier does not constitute an impairment to navigation or reduce the effective flood flow capacity of the St. Croix River and is not "detrimental to the public interest in navigable waters" within the meaning of sec. 30.12(2), Stats., if maintained in its configuration at the time of the hearing and in accordance with the conditions of the attached permit.

ORDER

The enforcement action of the Department, Docket #3-WC-94-1061, is dismissed.

PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicants, a permit under sec. 30.12, Stats., for the construction of structures as configured at the time of the hearing and as described in the foregoing Findings of Fact, subject, however, to the conditions that:

1. The authority herein granted can be amended or rescinded if the structure becomes a material obstruction to navigation or becomes detrimental to the public interest.

2. The permittees shall waive any objection to the free and unlimited inspection of the premises, site or facility at any time by any employee of the Department of Natural Resources for the purpose of investigating the construction, operation and maintenance of the project.

3. The permittees shall obtain any necessary authority needed under local zoning ordinances and from the U.S. Army Corps of Engineers.

4. This permit does not authorize any work other than what is specifically described. This permit authorizes the pier described in the application and constructed at the time of the hearing.

5. This permit does not authorize the placement of mooring buoys at this location without modification of this permit.

6. All canopies or boat shelters must comply with the standards in Chapter NR 326, Wis. Adm. Code. In particular, canopies and boat shelters may not have side drops.

7. Acceptance of this permit shall be deemed acceptance of all conditions herein.

8. This permit will expire ten years after the date of issuance.

This permit shall not be construed as authority for any work other than that specifically described in the Findings of Fact.

Dated at Madison, Wisconsin on June 17, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By Mark J. Kaiser
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.